PACLINE (M) SDN. BHD.

v.

TAN WEE YOONG

HIGH COURT MALAYA, SHAH ALAM
DATO' MAHADEV SHANKAR J.
[ORIGINATING MOTION NO. 25-12-1994]
13 JULY 1994

LAND LAW: Private caveat - Binding the whole land - Caveator has limited interest.

The plaintiff is the owner of a piece of land that has been subdivided for the development of a housing project. The defendant paid a deposit for the purchase of one of the units in the said housing project. The defendant caveated the whole piece of land. The plaintiff applied to set a side the caveat.

Held:
[1] The case of *Tan Heng Poh v. Tan Boon Thong* shows beyond a shadow of a doubt that the defendant's caveat is a nullity.

[Application allowed].

Cases referred to:
Tan Heng Poh v. Tan Boon Thong & Ors. [1992] 1 MLJ 1 (***foll***)
Punca Klasik Sdn. Bhd. v. Abdul Aziz b. Abdul Hamid & 10 Ors. [1994] 1 AMR 410 (***foll***)

For the plaintiff - Logan Sabapathy (David Morrais with him); M/s. Logan Sabapathy & Co.
For the defendant - S.M. Kam; M/s. S.M. Kam Associates

JUDGMENT

Mahadev Shankar J:
This is yet another application by the plaintiff (Pacline) to remove yet another caveat entered against the same lands (the said land) which is the subject of my judgment in OM. 25-3-94 between Pacline and Tan Kim Foong.

I have set out the history of this matter in so far as it is relevant to this application in that judgment. It is not necessary to repeat it here.

The statutory declaration sworn by Tan Kim Foong on 12 November 1993 was in all respects identical to the statutory declaration sworn by Tan Wee Yoong in support of her caveat on 21 February 1994 with the sole exception that Tan Kim Foong purported to purchase a unit GA8 whereas Tan Wee Yoong purported to purchase a unit GA7.

This application came up for hearing its on 3 June 1994. Mr. S.M. Kam who appeared for the defendant applied for an adjournment on the ground that he had only been retained on 1 June 1994. Pacline's solicitors objected. The cause papers had been served or brought to the defendant's notice. She chose to act in person. On 8 May 1994 she affirmed an affidavit and filed and served it on 9 May 1994. On 18 May she affirmed a second affidavit which she also filed and subsequently served.

The fact is that this defendant had ample notice of these proceedings and it would have been wrong to grant an adjournment merely because she had elected to engage Counsel at the last minute.

Nor would it have served any useful purpose because the case of *Tan Heng Poh v. Tan Boon Thong & Ors.* [1992] 1 MLJ 1 which I fully dealt with in *Tan Kim Fong's* case shows beyond a shadow of a doubt that her caveat like Tan Kim Foong's was a nullity. *Punca Klasik Sdn. Bhd. v. Abdul Aziz b. Abdul Hamid & 10 Ors.* [1994] 1 AMR 7 page 410 is a more recent example this.

I therefore make an order in terms of Pacline's application.